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October 19, 2004

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\*ALSO ADMITTED IN GA

Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

04-00360

Re: Petition of Lynwood Utility Corporation for Approval of Transfer and Control  
*Nunc Pro Tunc*

Dear Mr. Miller,

I have enclosed for filing the original and fourteen copies of the Petition of Lynwood Utility Corporation for Approval of Transfer and Control *Nunc Pro Tunc*. Please return the extra copy to me stamped filed. I have also enclosed a check in the amount of \$25.00 for the filing fee. Thank you for your assistance in this matter.

Sincerely yours,

*Donald L. Scholes*

DONALD L. SCHOLES

Enclosures  
c Tyler Ring

BKSJ File No 04-477

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**Nashville, Tennessee**

**In re: PETITION OF LYNWOOD UTILITY )**  
**CORPORATION FOR APPROVAL )**  
**OF TRANSFER AND CONTROL ) DOCKET NO. \_\_\_\_\_**  
***NUNC PRO TUNC* )**

**PETITION FOR APPROVAL OF TRANSFER AND CONTROL *NUNC PRO TUNC***

Comes now Lynwood Utility Corporation (Lynwood) and files this Petition for approval of the transfer of the ownership and control of Lynwood pursuant to T. C. A. § 65-4-113. The sole shareholder of Lynwood is Southern Utility Corporation.

Lynwood Utility Corporation provides sewer service in Williamson County, Tennessee pursuant to a certificate of public convenience and necessity issued originally to Lynwood Utility Company on June 14, 1976. Lynwood Utility Corporation acquired the assets and operating authority of Lynwood Utility Company by an Order dated June 27, 1996 by the Tennessee Public Service Commission. By Order dated January 24, 2001, the Authority approved the transfer of the ownership and control of Lynwood to Southern Utility Corporation.

On May 1, 2002, the shareholders of Southern Utility Corporation transferred 50% of the outstanding stock of Southern Utility Corporation to Tyler Ring and John Ring. On January 1, 2003, the shareholders of Southern Utility Corporation transferred the remaining 50% of outstanding stock of Southern Utility Corporation to Tyler Ring and John Ring.

After the transfer of the remaining 50% of the outstanding stock of Southern Utility Corporation to Tyler Ring and John Ring on January 1, 2003, the new shareholders sought the advice of counsel concerning whether the Authority needed to approve the transfer of the

remaining 50% of the stock of Southern Utility Corporation to them. Counsel for Lynwood wrote Richard Collier, the Authority's General Counsel, on January 23, 2003, and requested his opinion on whether any approval by the Authority was required and explained why counsel for Lynwood believed T.C.A. § 65-4-113 did not require any such approval. A copy of this January 23, 2003 letter is attached at Exhibit A to this Petition. Counsel for Lynwood never received a written response from Mr. Collier. Nevertheless, the Authority staff has recently informed Lynwood that such approval was required. Therefore, Lynwood files this Petition For Approval of Transfer and Control *Nunc Pro Tunc*.

Since the transfer of ownership and control of Southern Utility Corporation, Lynwood has continued to operate as it has in the past, using the same name, tariff, and operating authority. The transfer of control has been transparent and should have no adverse effect on Lynwood's customers. Davis Lamb, a former shareholder of Southern Utility Corporation who involved in the day-to-day operations of Lynwood, continued to work with Tyler Ring and John Ring for several months to assist them in learning the operation of Lynwood and to assure continuity in business practices. Lynwood has continued to use the same personnel for billing and accounting services since the transfer.

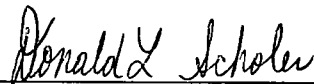
Since the transfer the new shareholders of Southern Utility Corporation have invested approximately \$ 980,000.00 in the Lynwood sewer treatment plant to upgrade and improve the plant. After Tyler Ring and John Ring became the sole shareholders of Southern Utility Corporation, Lynwood was sued for certain violations of its NPDES permit issued by the Tennessee Department of Environment and Conservation (TDEC). The improvements made by

the new shareholders of Southern Utility Corporation have resulted in the sewer plant coming into full compliance with TDEC regulations and the dismissal of the lawsuit.

Wherefore, Lynwood asserts that the transfer and control of Lynwood from the transfer and control of the stock of Southern Utility Corporation to Tyler Ring and John Ring is in the public interest and requests that the Authority approve the transfer and control of Lynwood *nunc pro tunc* from January 1, 2003.

Dated this 18<sup>th</sup> day of October, 2004.

Respectfully submitted,



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*Attorney for Lynwood Utility Corporation*

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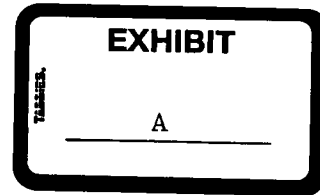
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January 29, 2003



Richard Collier, General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Pkwy  
Nashville, TN 37243-0505

*Via fax at 741-5015 and first class mail*

Re Lynwood Utility Corporation

Dear Richard:

After we spoke briefly yesterday, I thought it might be helpful if I put down in writing the question I wanted to discuss with you before we spoke again.

I represent Lynwood Utility Corporation. The stock of Lynwood Utility Corporation is wholly owned by Southern Utility Corporation. The TRA approved the transfer of the sale of the stock of Lynwood Utility Corporation from David Terry to Southern Utility Corporation by order dated January 24, 2001, a copy of which is enclosed.

The individual owners of the stock of Southern Utility Corporation have recently transferred all of the stock of Southern Utility Corporation to two new shareholders. Dan McCormac and Rose Gregory contacted Davis Lamb with Lynwood Utility Corporation and advised him that this transfer of the stock of Southern Utility Corporation required the approval of the TRA. Mr. Lamb contacted me after he received an e-mail from Dan raising this issue. I reviewed T.C.A. § 65-4-113 and told Mr. Lamb that I thought this statute only required the TRA to approve the transfer of the stock of Lynwood Utility Corporation. When Mr. Lamb conveyed my position to Dan, he insisted that the Lynwood Utility Corporation was required to obtain the approval from the TRA of the transfer of the stock of Southern Utility Corporation. In this transaction the owner of the stock of Lynwood Utility Corporation, Southern Utility Corporation, remained unchanged.

The language of T.C.A. § 65-4-113 provides that no public utility, in this case Lynwood Utility Corporation, shall transfer any or all of its authority to provide utility services derived from its certificate to another person or entity without the approval of the TRA. Lynwood Utility Corporation has not transferred any of its authority to operate a sewer system to any person or entity in this transaction. Before this transaction Lynwood Utility Corporation, with Southern Utility Corporation as its sole shareholder, had the authority to provide sewer service under its certificate.

Richard Collier, General Counsel  
January 29, 2003  
Page 2

After the transfer of the stock of Southern Utility Corporation to two new individuals, Lynwood Utility Corporation, with Southern Utility Corporation as its sole shareholder, still is the only entity with the authority to provide sewer service under its certificate

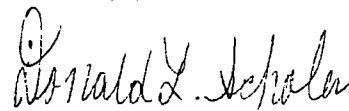
The language of T.C.A. § 65-4-113(c) seems to support this proposition. This subsection provides that following the approval of a transfer the "transferee" has authority to provide the transferred services and that the "transferor" does not. In the transaction I have described, Lynwood Utility Corporation has the authority to provide sewer service under its certificate both before and after the transaction and its sole shareholder, Southern Utility Corporation, is the same. This transaction does not appear to be within the scope of T.C.A. § 65-4-113 since there is no separate transferee and transferor in the transaction.

If I am not interpreting this statute correctly, I would appreciate any clarification you can give me. If the TRA has required the approval of similar stock transfers, I would appreciate you sharing with me such examples so I can explain the scope of the TRA's jurisdiction to my client.

Lynwood Utility Corporation is willing to file a petition for approval of the stock transfer of Southern Utility Corporation if that is necessary. I need to be able to explain to them how T.C.A. § 65-4-113 or any other statute requires such approval before it undertakes to file such a petition.

Any assistance you or any other attorney in the Legal Division can give me on this issue will be greatly appreciated. I am thanking you in advance for your assistance.

Sincerely yours,

  
DONALD L. SCHOLES

Enclosure  
c. Davis Lamb

BKSJ File No 00-710

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

January 24, 2001

IN RE:

PETITION OF LYNWOOD UTILITY CORPORATION FOR  
APPROVAL OF TRANSFER OF CONTROL *NUNC PRO*  
*TUNC*

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DOCKET NO.  
00-00690

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ORDER APPROVING TRANSFER OF AUTHORITY *NUNC PRO TUNC*

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This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on November 7, 2000 on the Petition (the "Petition") of Lynwood Utility Corporation ("Lynwood") for approval of a transfer of authority to provide utility services *nunc pro tunc*. This transfer is part of the sale of Lynwood on May 12, 1999 by Mr. David Terry to Southern Utility Corporation ("Southern").

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

### **Background**

In Authority Docket No. 99-00507, the Authority approved Lynwood's request for a rate increase on February 29, 2000. An Order reflecting this decision was issued on May 10, 2000. During the rate proceeding, it was determined that ownership of Lynwood was transferred on May 12, 1999 from Mr. David Terry to its current owner, Southern, resulting in a de facto transfer of authority to provide utility services, and that this transfer of authority took place without a request by either Mr. Terry or Southern for approval as required by Tenn. Code Ann. § 65-4-113. Accordingly, after the rate increase was approved, Docket No. 99-00507 was left open for further consideration of this transfer and two other issues.<sup>1</sup>

On August 2, 2000, a Hearing was held at which Mr. Terry testified concerning the three outstanding issues and his general involvement with Lynwood while he was its owner. At that Hearing, Lynwood was directed to file a request for approval of the transfer of authority to provide utility services involved in the sale of Lynwood by Mr. Terry to Southern.

On August 7, 2000, Lynwood filed its Petition for Authority approval *nunc pro tunc* of the transfer of ownership and control of Lynwood from Mr. Terry to its current owner. Although this Petition has been assigned a separate docket number, the Petition was filed pursuant to the Directors' request relative to Docket No 99-00507.

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<sup>1</sup> At the Authority Conference held on July 11, 2000, the Directors granted intervention in Docket No 99-00507 to Mr. Jacob C. (Chris) Martin as to the three outstanding issues in that proceeding. Mr. Martin has been served with copies of all documents filed with respect to the Petition to transfer authority in the instant matter (Docket No 00-00690). Generally, the other two issues involve the alleged waiver of certain tap fees by Lynwood's previous owner and Lynwood's apparent over-billing of its one non-residential customer, Walnut Grove Elementary School.

## **The Petition**

As the Petition states, Lynwood provides sewer service in Williamson County pursuant to a certificate of public convenience and necessity originally issued to Lynwood Utility Company on June 14, 1976. Lynwood Utility Corporation's acquisition of the assets and operating authority of Lynwood Utility Company was approved by the Tennessee Public Service Commission in an Order dated June 27, 1996. On May 12, 1999, all of the outstanding stock of Lynwood was transferred from its sole shareholder, Mr. Terry, to Southern, the current owner of Lynwood.

As the Petition further states:

Since the transfer of ownership and control, Lynwood has continued to operate as it has in the past, using the same name, tariff, and operating authority. The transfer of control has been transparent and should have no adverse effect on Lynwood's customers. Before the transfer of control occurred, the new management of Lynwood became familiar with the operations of Lynwood by managing the day-to-day operations of Lynwood for approximately five months before the transfer under a management contract with Lynwood.

Southern Utility Corporation has a vested interest in the financial viability of Lynwood in that the principals of Southern Utility Corporation are involved in the development of the River Landing Subdivision which will receive sewer service from Lynwood. Southern Utility Corporation and its related companies have access to financial resources to upgrade the Lynwood treatment and collection system. Since Southern Utility Corporation acquired the stock of Lynwood and put in new management, Lynwood has made extensive capital improvements to and has expanded its sewer treatment plant. Lynwood's financial condition has improved, and Lynwood has substantially increased its compliance with the rules and regulations of [the] Authority<sup>2</sup>

In addition to these facts which, the Authority finds, favor granting Lynwood's Petition, the rate increase approved in Docket No. 99-00507 is expected to improve Lynwood's financial situation and its ability to provide utility service.<sup>3</sup>

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<sup>2</sup> Petition, August 7, 2000, pp 1-2

<sup>3</sup> See *Order Approving Rate Increase*, Docket No. 99-00507, May 10, 2000, p. 2

Although Authority approval of the transfer of authority should have been sought at the time Mr. Terry sold Lynwood to Southern, Lynwood's current owner has demonstrated that such approval is warranted, both through its Petition in this docket and through its actions in relation to Docket No. 99-00507.

**Findings**

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on November 7, 2000. Based upon careful consideration of the Application and the Exhibits thereto, and of the entire record of this matter, the Authority finds and concludes as follows:

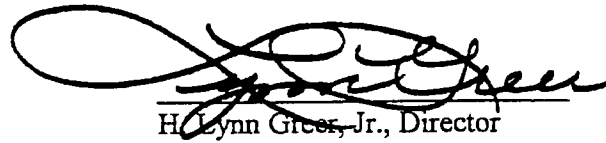
1. That the Authority has jurisdiction over the subject matter of this Petition pursuant to Tenn. Code Ann § 65-4-113;
2. That Lynwood Utility Corporation has been granted authority to provide utility service in Tennessee;
3. That on May 12, 1999, Southern Utility Corporation acquired all of the outstanding stock of Lynwood Utility Corporation, thus acquiring the assets and operating authority of Lynwood Utility Corporation;
4. That Southern Utility Corporation has the suitability, financial responsibility, and capability to perform efficiently the utility service to be transferred to it; and
5. That the transfer of authority will benefit the consuming public.

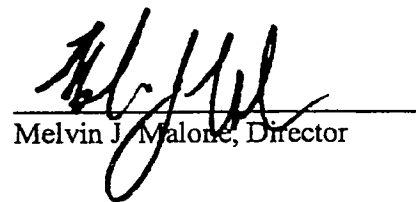
**IT IS THEREFORE ORDERED THAT:**

1. The Petition of Lynwood Utility Corporation for approval of the transfer of authority described herein is approved *nunc pro tunc*, and

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary